

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs May 25, 2006

**STATE OF TENNESSEE DEPARTMENT OF  
CHILDREN'S SERVICES v. S.V., ET AL.**  
**In Re: M.V. and J.V.**

**Appeal from the Juvenile Court for McMinn County  
No. 21742 James F. Watson, Judge**

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**No. E2006-00686-COA-R3-PT - FILED JULY 6, 2006**

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The State of Tennessee Department of Children's Services ("the State") filed a petition to terminate the parental rights of S.V. ("Mother") and W.V. ("Father") to the minor children M.V. and J.V. ("the Children"). After a trial, the Juvenile Court terminated the rights of Mother and Father to the Children. Mother appeals the termination of her parental rights. Father does not appeal the termination of his parental rights. We find that the State failed to make reasonable efforts to assist Mother and, therefore, reverse the termination of Mother's parental rights.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed;  
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Vance L. Baker, Jr., Athens, Tennessee for the Appellant, S.V.

Paul G. Summers, Attorney General and Reporter; and Elizabeth C. Driver, Assistant Attorney General, for the Appellee, State of Tennessee Department of Children's Services.

Bridget J. Willhite, Athens, Tennessee, guardian ad litem for M.V. and J.V.

## OPINION

### Background

The State has a history of referrals and involvement with this family since the older child, M.V., was born. Mother and Father have a history of domestic violence and Mother has obtained orders of protection against Father on several occasions. When the State visited the home in February of 2003, there was no food for the Children and the Children had unexplained bruising. The Children were brought into State custody and permanency plans<sup>1</sup> were set in place with a stated goal of returning the Children to Mother and Father.

Under the permanency plans, Mother was required to, among other things, attend anger management classes; attend individual counseling; check out any adult that the Children are left alone with for any amount of time and try to obtain a licensed daycare or child care worker for babysitting; attend parenting classes; learn appropriate discipline methods and use these methods during visitations with the Children; take steps to make sure that the Children's basic needs including food, medical attention, appropriate supervision, clothing, and protection from safety concerns will be met on a daily basis; and make sure there is at least three days worth of food for the Children in the home at all times.

On April 29, 2005, the State filed a petition to terminate the parental rights of Mother and Father to the Children ("the Petition"). By that time, the Children had been in State custody for over two years and were in foster care. The Petition alleged, among other things, that Mother and Father had willfully failed to support or make reasonable payments toward the support of the Children, that Mother and Father had failed to make reasonable efforts to provide a suitable home for the Children, that Mother and Father had failed to comply with the statement of responsibilities set out in the permanency plans, and that the conditions which led to the removal of the Children persist which in all probability would cause the Children to be subjected to further abuse and neglect and that there is little likelihood that these conditions will be remedied at an early date. The case was tried without a jury in November of 2005.

Gail Simpson, a foster care worker for the Department of Children's Services ("DCS") who has worked on this case since the children came into custody in February of 2003, testified at trial. Ms. Simpson testified that just before the Children came into State custody, Mother and Father left the children with a registered sex offender and that Father admitted to Ms. Simpson that he knew this prior to leaving the Children with this person. Ms. Simpson further testified that at the time the Children came into state custody, there was a sex offender living in the household with the Children.

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<sup>1</sup>Several permanency plans were entered into during the two plus years that the Children have been in State custody. For purposes of this appeal, the tasks and goals required of Mother are substantially the same in each of the plans.

Ms. Simpson testified regarding Mother's progress toward the parenting plan goals. Ms. Simpson testified that Mother completed parenting classes, underwent a parenting assessment, and attended anger management classes during the first year of the plan. However, Mother missed eight visits with the Children during the first year. Ms. Simpson testified that by February of 2004, Mother and Father were living in separate residences and Mother was starting to get in-home visits with the Children working toward a trial home. Ms. Simpson testified that in April of 2004, Mother was living in an apartment with her boyfriend and things appeared to be going well. However, on May 12, 2004, when Ms. Simpson visited the home, she discovered that Mother and her boyfriend had disappeared leaving their belongings in the apartment and that the landlord had a warrant out for Mother's arrest due to bounced checks. As a result, Mother's visits with the Children were moved back to in-office visits.

Ms. Simpson testified that after it was decided that the trial home placement would not work, it was difficult to locate Mother for a time as Mother reportedly was living between two homes and was not maintaining visits with the Children. Ms. Simpson testified that Mother went for approximately six weeks without visiting the Children. In June of 2004, Mother called Ms. Simpson to report that she was living at a new address. However, when Ms. Simpson sent a letter to Mother at the new address, it was returned. Mother later reported she was homeless for a period and then was living at a temporary address.

Ms. Simpson testified that in August of 2004, Mother got an apartment on Million Street in Athens and the process of working toward a trial home placement began again. Mother was allowed to have the Children with her at home for Christmas that year. However, Ms. Simpson testified that at the end of December, Ms. Simpson was notified that Mother was evicted from her apartment. Ms. Simpson later discovered that during the holiday, Mother stayed at a Days Inn for two days with the Children. Ms. Simpson testified that she does not know where Mother lived from January 1, until March 11, 2005, and Mother was not allowed in-home visitation with the Children during that time.

Ms. Simpson testified that since the Children entered State custody, Mother has had at least 15 different residences. Ms. Simpson also testified that over the two and a half years since the Children came into custody, Ms. Simpson has noticed that both of the Children appear to be less affectionate toward the parents. When asked about risks if the Children were returned to Mother, Ms. Simpson stated:

[Mother] is - - has been in the past very unstable in her residences. She has been homeless. She's been in jail for worthless checks. She has been in jail for violation of probation in three different counties, McMinn, Monroe and Rhea County. If she got the kids and she was arrested again and went to jail, what would happen with the children? If she got kicked out of her apartment, they would have no home. [Mother] is also - - needs to be reminded at times of the children's needs....Such as feeding them, remembering to feed them. Sometimes she needs to be reminded to take them to the bathroom.

Ms. Simpson testified that both of the Children have been diagnosed as bipolar and are on daily medication. She further testified that when the Children first came into custody:

both of them were nonverbal. They would grunt when they wanted something. They would grunt or point. They would eat with their hands or with a spoon. They would not - - they would sit down at a table and eat. They would not - - they didn't appear to have any manners, table manners whatsoever....And then [the younger child], unless he was held and forced not to, sat almost the whole time and banged his head either on the floor, on the chair, on the wall, whatever he could hit, he would hit his head....

Michelle Richardson, who works for OmniVision Therapeutic Foster Agency, which provides in-home therapeutic foster care services and does adoptions, testified at trial. Ms. Richardson testified she has been the foster care worker for this family since February of 2003. Ms. Richardson testified that OmniVision's role in the beginning was to assist with reunification and that they provided transportation and supervision for the parents' visitations with the Children.

Ms. Richardson testified that there was a period of almost four months in 2004, around Mother's Day, when Mother stopped visiting the Children with no explanation or communication. Ms. Richardson testified that Mother would miss visits without contacting her. When Mother resurfaced for visitation after missing four months without explanation, Ms. Richardson testified that Mother said:

she was out of town. I think it was involving a funeral. I got different pieces of the story. It also involved a car accident. She was in a really bad car accident that involved her being hospitalized for some period of time. I think she lost everybody's phone numbers, maybe her purse or address book was stolen. The information was a little sketchy, so it's kind of hard to put together into some kind of nice sentence, but that's basically the information I was given. It was just very sketchy and it would kind of waiver a little bit back and forth and we couldn't even get concrete factual information of anything to even confirm because we couldn't get details enough to even follow through....Couldn't tell us really where the accident happen[ed], who was involved, where there - - you know, did a police officer take you, you know, things like that we would ask and it was just - - the story would kind of fall short and we really couldn't confirm anything.

Ms. Richardson testified:

[Mother], she can do a good job. I've said that before at the last court hearing. She can for four months or so do great and be on track and be very receptive to the resources and things truck along and then again, we just fall off for whatever reason, things fall off and then we pick back up and we start it all over again. We've done this. This will be our third time. So we do have a pattern that has built over the last

two-and-a-half years. That is my biggest concern is the pattern that she has shown with inconsistency and instability of housing and, you know, the support in her life, inconsistency there.

Dr. Tom Biller a clinical psychologist who practices in Cleveland, Tennessee evaluated each of the parents in July of 2003, to “assess each of the individual’s intellectual functioning and to gather information regarding their personality dynamics and parenting skills,” prepared a written report of his findings, and testified at trial. Dr. Biller testified he has approximately 29 years experience in the field of psychology. Dr. Biller testified that he diagnosed Mother with a narcissistic personality disorder and explained:

The diagnosis of a personality disorder is a relatively enduring set of actions or beliefs that the person has within. The personality disorder is not so much a set of symptoms as it is a set of characters, characterizations within the individual. Narcissism is a term that refers to self-centeredness and in an extreme form, it becomes a narcissistic personality disorder. So an individual that has a narcissistic personality disorder is most concerned about meeting their own needs and much less concerned about meeting the needs of anybody else....[I]t would be difficult for an individual with a narcissistic personality disorder to adequately parent. Children by nature are narcissistic. Primary narcissism is the Freudian term. In other words, we are born with an id, which is the part of us that says I want my gratification and I want it now. But as we mature and as we grow, we develop an ego or executive function and we also develop within us a super ego, which is the ability to socialize oneself and to learn to put the needs of others who are helpless above our own.

Children by nature require and demand the attention of their parents. And usually during the process, it’s very stressful for parents when children are little because they are so demanding. Usually individuals outgrow that narcissistic phase and become more able to care for and understand the needs of others and not just their own needs.

In this case, [Mother] was viewed as having an ongoing problem with self-centeredness that would be listed as a narcissistic personality disorder.

Dr. Biller further testified:

a personality disorder diagnosis is going to require intensive counseling, intensive psychotherapy. By that I mean one to two years minimum and once a week, once a week counseling for the hour session and during that time it may be necessary to have some more frequent sessions because in the process of doing this type of psychotherapy, it is what is referred to as reconstructive therapy. In other words, you’re actually working to help the individual reconstruct personality traits and characteristics that have not been adequately developed in the past.

When Dr. Biller was asked how successful intensive therapy for this type of disorder is, he stated:

It's not particularly - - well, let me put it this way. It's not as helpful as I would like. Part of the problem is if I have developed a rather narcissistic view of the world, my needs are being met and I'm used to that. So unless I have a lot of motivation to get outside of myself, so to speak, I don't have the motivation level to make the changes necessary.

One thing though, if an individual that has been diagnosed with a narcissistic personality disorder has a goal that is more important to them than maintaining their narcissism, if they are consistent with treatment and counseling and go to therapy regularly, it is possible to make progress with these individuals and I have worked with some individuals in the past 30 years that have had this diagnosis and have been so motivated to make a change and they have been very consistent and some of these people I worked with for several years on at least once a week, sometimes twice a week basis initially and they have made significant progress and you would not be able to tell the same person after two or three years.

Dr. Biller further testified that "[w]ithout therapy, an individual with this diagnosis would not change."

When asked if it would be detrimental for the children to be returned to Mother if Mother had not had interventional therapy, Dr. Biller stated: "Unfortunately, I believe that it would be detrimental to the children to go back into that situation if there were no treatment or no change because the narcissism or self-centeredness would not have changed." Dr. Biller testified:

The characterological problems would indicate that it would be difficult for a person with a narcissistic personality to be able to put her own needs second. If it's convenient for me to take care of this child right now, no problem, I can do that. But if it's inconvenient for me right now, I might know that I should do that, but I wouldn't have the characterologic push, if you would, to do the right thing consistently....I might know what is appropriate, but my motivation to do right might not always be there.

John Gillahan, a clinical therapist at Hiwassee Mental Health Center, treated Mother and testified at trial. Mr. Gillahan testified that he was referred by DCS and that he has spoken to Ms. Simpson regarding Mother's problems. Mr. Gillahan testified that Mother began seeing him in November of 2003. Since that time, Mr. Gillahan has had 15 sessions with Mother. Mr. Gillahan testified that out of 28 appointments, Mother kept 15. Specifically, Mr. Gillahan testified that Mother attended one session with him in 2003; five sessions in 2004; three sessions in 2005, prior to the filing of the Petition; and that Mother has continued to attend sessions with him since the Petition was filed.

Mr. Gillahan testified that he did a clinical intake assessment of Mother, which is an involved interview and he concluded that Mother had anxiety disorder “which means she was upset about certain things.” Mr. Gillahan did not do testing as Dr. Biller did.

Mr. Gillahan testified that he was not aware that Mother had been evaluated by Dr. Biller. When asked if it would have assisted in his treatment of Mother if he had Dr. Biller’s report, Mr. Gillahan stated: “Yes, sir. I would have liked to have seen that information.” When asked what he would have done if he had the information from Dr. Biller, Mr. Gillahan stated: “I’m not sure. I didn’t see that. You know, we worked on boundaries with her boyfriend and I didn’t see narcissistic behaviors or tendencies.” Mr. Gillahan agreed that because he did not observe narcissistic behaviors or tendencies, he saw no reason to treat Mother for them.

Mr. Gillahan testified that he did not talk with Mother during the intake interview about the fact that she had been in therapy during adolescence although he realized she had an old file number which indicated that there was a previous record on her. Mr. Gillahan admitted, however, that information regarding the previous therapy would have been significant to how he proceeded with the current therapy. Mr. Gillahan further testified that he was not aware that Mother had been admitted to at least three different psychiatric facilities in the past and that this knowledge probably would have been helpful to him. Mr. Gillahan testified that Mother did not tell him about her history with domestic assault or her criminal charges and convictions and that this information probably would have been helpful to him in treating her. Mr. Gillahan testified that Mother told him that she was arrested once in 2005, but that it was a mistake. Mr. Gillahan testified that Mother never told him that she had fifteen residences during the two and a half years the children have been in custody. Mr. Gillahan testified that had he known about Mother’s many residences, he would have addressed this issue with her.

Mr. Gillahan testified that over time, “[Mother] seemed more cheerful. She seemed continually anxious to get her kids back and comply with DCS. She didn’t lose hope. She was able to set appropriate boundaries and verbalize what those should be and verbalize what behaviors she would and would not accept with her boyfriend.”

Mr. Gillahan was shown a copy of Dr. Biller’s report at trial. After seeing the report and being asked if this information would change his therapy, Mr. Gillahan stated: “I think I could add a few things. We’d still probably do what we did, but perhaps add some other things.” Mr. Gillahan stated that now that he has seen Dr. Biller’s report “I have some information now that I can use to address different issues [with Mother].”

Bill Freeman who began seeing Mother for anger management therapy beginning on June 13, 2005, after the Petition was filed, also testified at trial. Mr. Freeman testified that he has a private practice named Smokey Mountain Counseling Center. Mr. Freeman testified that Mother told him that she was required to attend ten consecutive anger management sessions. Mr. Freeman testified that Mother made average progress during the sessions and that after the tenth session, Mother asked if she could continue seeing him. Mr. Freeman testified that he still is treating Mother,

but he would like for her to make a choice between him and John Gillahan so she is seeing only one therapist “because I didn’t want her to get mixed messages from two therapists.”

Mr. Freeman testified that he did not do any testing of Mother, just an “anger survey trying to figure what specific areas of the anger is she having problems with that we need to concentrate on.” He testified that he is not licensed to do psychological testing. When asked if it would have been helpful for him to have information from testing done by Dr. Biller, a licensed psychologist, Mr. Freeman stated: “That would be fine, yeah. That would help.” Mr. Freeman testified that he diagnosed Mother as having a generalized anxiety disorder. He further testified that Mother told him that she took a Rorschach test but did not know the diagnosis.

Mr. Freeman testified:

[T]he thing that impressed me the most with [Mother] was that with all the transportation problems, with all the housing problems, with all the legal problems, she would constantly call me back and say let’s set up another appointment, I need to get these ten sessions. So that was what impressed me the most. She knew that [DCS] had required that of her and she was bound and determined to do it. That’s the thing that struck me the strongest was I’m going to do whatever I can to get my kids.

When asked what impressed him the least about Mother, Mr. Freeman stated:

That’s a good question. I felt like it took her a long time to trust me. She was just - - she’s just beginning to open up and tell me things about her life that some clients will tell me within the first five sessions. And I suspect because of her past history of all the problems that she’s had with adults and authority figures and everything else, that that kind of goes along with why she doesn’t trust me.

When asked if he and Mother discussed why Mother had waited over two years before seeking anger management therapy, Mr. Freeman stated: “Well, from the sound of it, it was all the bounced checks and all the problems, personal problems and stuff. That was my impression from what she told me.”

Mr. Freeman testified he was not aware that Mother missed four months of visitation with the Children without contacting DCS or that Mother has had 15 different residences in the past two and a half years. Mr. Freeman admitted that this information would have helped in the counseling sessions. When asked if he relies upon a client to give him factual information so he can treat them, Mr. Freeman stated:

Part of the thing that we’re dealing with is the embarrassment of that. They don’t like to talk about that sometimes and I think that goes back to the trust. I was finding out more and more what was going on as [Mother] was trusting me. But, yes, to



answer your question, it would be tremendously helpful if I had all the background information that she was going through so I would know. And eventually from my point of view, as she trusts me, that stuff comes out.

Mr. Freeman admitted that he can't treat someone if he doesn't have all the information and stated: "It's the stigma of mental health problems that we deal with all the time."

Ms. Simpson was questioned at trial regarding why she did not provide Mr. Gillahan and Mr. Freeman with Dr. Biller's diagnosis and report. Ms. Simpson testified that she has had a copy of Dr. Biller's report since August of 2003. Ms. Simpson further testified that she was not aware that Mother was seeing Mr. Gillahan until October of 2004, when Mr. Gillahan called Ms. Simpson. However, even at that time, Ms. Simpson did not tell Mr. Gillahan that Mother had undergone the psychological testing. When asked if she thought it was necessary to give a professional treating Mother all of the information concerning Mother's psychological makeup, Ms. Simpson stated: "I cannot give Mr. Gillahan that information. I couldn't fax the report to him or anything like that because I cannot legally give him - - I can't do that. I did not generate that information, so legally due to the HIPPA laws, I could not fax it to him." When asked if she had Mother sign a release for the psychological report prepared by Dr. Biller, Ms. Simpson stated: "I don't know if I could legally do that or not."

The Juvenile Court entered a Termination of Parental Rights and Final Decree of Guardianship ("Order") on February 8, 2006, terminating the parental rights of both Mother and Father. In the Order, the Juvenile Court found and held, *inter alia*:

7. As to [Mother] the Court finds, in considering the alleged ground of abandonment, as defined by T.C.A. § 36-1-102(1)(A)(ii), that for the first 22 months after removal, [Mother] moved numerous times. Testimony was presented that, between February 12, 2003 and the present, [Mother] had 13 different residences. However, since March 11, 2005, some 8 months now, [Mother] has resided in the same apartment at the Park Village Apartments. The Court believes the parent has until the time of hearing to show what progress he or she can make, so although at the time the Petition to Terminate was filed there would have been ample proof as to this ground, the Court does not find this ground to be proven by clear and convincing evidence on this date.

8. As to the second ground alleged, namely, failure to substantially comply with the Permanency Plan, the Court finds that:

- a. [Mother] was required to provide closer supervision of the children. Proof showed that during her supervised and unsupervised visits there were no issues raised as to inappropriate supervision.
- b. [Mother] was to attend anger management and individual counseling. Testimony was present[ed] by Mr. Gillahan and Mr.

Freeman that she has and continues to be in counseling with them. The requirement for marriage counselor is moot, since the parents have separated and appear to have given up on the marriage.

c. [Mother] was to obtain and maintain stable housing and provide the children's basic needs. The housing situation has already been addressed. She appears in a stable home situation now and with her job, disability check and food stamps, it appears she could provide for the children's basic needs if she had custody of them.

d. The biggest issues as to completing the Permanency Plan requirements appear to be the parenting assessment completion and obtaining necessary services to follow the recommendations from the assessment. The proof showed that [Mother] completed the assessment and that several recommendations were made including: counseling to deal with her anxiety and depression, which she is doing; therapy to address her narcissistic character traits, which she has not done; stress management skills, which she is getting in her counseling with Mr. Gillihan and Mr. Freeman. She completed parenting classes. Counseling to deal with the narcissistic personality has not been addressed; however, testimony shows that neither counselor was given a copy of Dr. Biller's psychological assessment, and although [Mother] had some obligation to advise her counselors of the testing, the Department did not follow through when it had the opportunity in October 2004, to provide the results to her counselor and assure the needed areas were being addressed.

Therefore, the Court does not find clear and convincing proof has been presented that [Mother] failed to substantially comply with the Permanency Plan requirements.

9. The Court finds that although [Mother] has now lived in the same residence for 8 months, is drawing disability and working at Sonic, there is concern with her lack of stability, her relationships and criminal activity over the past 33 months. Although she remains married, [Mother] has had two other romantic relationships since separating from [Father], one of which just recently ended. She is on currently on (sic) probation for worthless check convictions in both McMinn and Monroe County and owes over \$5,000 in restitution and court fees. Twice in the past 33 months, [Mother] progressed to unsupervised home visits with the children and was on the verge of having the children returned to her custody when something within her control happened which prevented the children from coming home.

The Court credits [Mother] for what she has accomplished; however, her pattern of instability indicates that the conditions that led to the children's removal still exist and the likelihood that these conditions will be remedied in the near future is a risk for the children that the Court can not justify taking. The Court finds [the

State] has provided sufficient proof for termination pursuant to T.C.A. § 36-1-113(g)(3).

Mother appeals to this Court the termination of her parental rights. Father does not appeal the termination of his parental rights.

### **Discussion**

Although not stated exactly as such, Mother raises two issues on appeal: 1) whether the Juvenile Court erred in finding clear and convincing evidence to support grounds for a termination of her parental rights; and, 2) whether the Juvenile Court erred in finding clear and convincing evidence that a termination of Mother's parental rights is in the best interest of the children.

As our Supreme Court has instructed:

This Court must review findings of fact made by the trial court *de novo* upon the record "accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002) (citing Tenn. Code Ann. § 36-1-113(c)). Upon reviewing a termination of parental rights, this Court's duty, then, is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

*In re: F.R.R., III*, No. M2004-02208-SC-R11-PT, 2006 Tenn. LEXIS 334, at \*\*4-5 (Tenn. May 8, 2006).

Clear and convincing evidence supporting any single ground will support a termination order. *See In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The State "must make reasonable efforts to preserve a family before seeking to terminate parental rights." *In re: Jeremy D. and Nathan D.*, No. 01-A-01-9510-JV-00479, 1996 Tenn. App. LEXIS 292, at \*\*7-8 (Tenn. Ct. App. May 17, 1996), *no appl. perm. appeal filed*.

The Juvenile Court found clear and convincing evidence to support a termination of Mother's parental rights pursuant only to Tenn. Code Ann. § 36-1-113(g)(3), which provides:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

\* \* \*

(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s) , still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3) (2005).

Mother argues, in large part, that there is no clear and convincing evidence to support a termination of her parental rights because the record shows that the State did not make reasonable efforts to reunite her with the Children. Specifically, Mother argues that the failure of DCS to provide her counselors with Dr. Biller's diagnosis and report "prevented [Mother] from adequately addressing her mental health issues in a timely fashion" and, had this information been shared with her counselors, Mother would have been able to improve her conditions such that the children could have been returned to her custody.

Dr. Biller testified in detail about his diagnosis of narcissistic personality disorder and how this condition makes it difficult for Mother to parent the Children adequately. Dr. Biller further testified that Mother will require intensive therapy for one to two years at a minimum to address her problems and, Dr. Biller testified that "[w]ithout therapy, an individual with this diagnosis would not change."

Although Mother did seek therapy, her counselors were unaware of Dr. Biller's diagnosis and recommendations. DCS furnished neither Mr. Gillahan nor Mr. Freeman with Dr. Biller's diagnosis and report. Neither Mr. Gillahan nor Mr. Freeman performed psychological testing on Mother and neither was aware that Mother had a narcissistic personality disorder. As a result, neither of Mother's treating therapists was able to address completely Mother's mental problems, specifically her narcissistic personality disorder.

The evidence shows that Ms. Simpson had Dr. Biller's report when she spoke to Mr. Gillahan regarding Mother, but that she never told Mr. Gillahan about Dr. Biller's diagnosis, or even that Dr. Biller had performed psychological testing on Mother. Even if Ms. Simpson were prevented

from releasing Dr. Biller's report to Mother's treating therapists, and we make no assertions regarding the legality or propriety of this issue, Ms. Simpson could have taken steps which at a minimum would have allowed Mr. Gillahan to seek a release from Mother for Dr. Biller's report. We agree with the Juvenile Court when it found that "the Department did not follow through when it had the opportunity in October 2004, to provide the results to [Mother's] counselor and assure the needed areas were being addressed."

The evidence shows that without intensive therapy to address her narcissistic personality disorder, Mother has no realistic chance to make the changes necessary for the Children to be returned to her care, and that the State, despite having the information in Dr. Biller's report, failed to assist Mother in obtaining the necessary treatment for her disorder. However, the evidence shows that with intensive therapy to address her narcissistic personality disorder, Mother at least has a chance to correct the conditions that led to the Children's removal and that prevent their safe return to her care. Given that the State failed to make a reasonable effort to assist Mother in obtaining treatment for her narcissistic personality disorder, we find and hold that a termination of Mother's parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(3) is inappropriate at this point in time. Further, after a careful review of the record on appeal, we agree with the Juvenile Court that clear and convincing evidence does not exist to support a termination of Mother's parental rights on any other ground at this time.

As we have determined there was no clear and convincing evidence at the time of the hearing establishing the grounds for a termination of Mother's parental rights, it would be premature to address the issue of whether it is in the best interest of the Children for Mother's parental rights to be terminated.

We reverse the Juvenile Court's termination of Mother's parental rights.

### **Conclusion**

The judgment of the Juvenile Court terminating Mother's parental rights is reversed and this cause is remanded to the Juvenile Court for collection of the costs below. The costs on appeal are assessed against the Appellee, the State of Tennessee Department of Children's Services.

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D. MICHAEL SWINEY, JUDGE